Office-Supreme Court, U.S.
FILED
APR 28 1981
ALEXANDER L. STEVAS
CLERK

No. 79-624

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1979

ERNST RUSS STEAMSHIP CO.,
Petitioner,

vs.

JOHN MATTHEWS,
Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

SUPPLEMENTAL BRIEF OF PETITIONER IN SUPPORT OF PETITION

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The decision in *Scindia Steam Navigation Co. v. De Los Santos,* No. 79-512 (April 21, 1981), controls this case squarely and completely. It is now apparent that the shipowner is entitled to a judgment *n.o.v.* since the case involves, at most, elective misuse of ship's gear. In the absence of actual knowledge, a duty to inspect or supervise, or obviously improvident conduct by the stevedore known to the shipowner, no negligence of the shipowner can be proven.

It is patent that the decision of the Court of Appeals for the Seventh Circuit must be reversed. First, jury

instruction No. 27 (Appendix to Petition for Certiorari, A-11) is utterly inconsistent with this Court's *Scindia* decision. The suggestion of the Court of Appeals (*id.*, at A-12) that the harm of such an instruction is cured by a contrary one is ludicrous. Second, the Court of Appeals sanctioned the refusal of the trial court to instruct on the stevedore's responsibility regarding portable ladders (applying to all such ladders, regardless of ownership, contrary to the opinion below, 29 C.F.R. § 1918.25(f)). Appendix to Petition for Certiorari, A-12. This Court in *Scindia* has said that in order to show the stevedore's legal duty and the vessel's justifiable expectations, the jury "should . . . be made aware of the scope of the stevedore's duty under the positive law"[1].

The court below approved an incorrect causation instruction, believing that *Edmonds v. Compagnie Generale Transatlantique*, 443 U.S. 256 (1979), supported its conclusion. As demonstrated by the absence of any citation to *Edmonds* in the Court's opinion in *Scindia*, *Edmonds* has nothing whatever to do with substantive issues of negligence and causation under 33 U.S.C. § 905(b).

Accordingly, the Court should grant certiorari and summarily reverse, either directing entry of judgment *n.o.v.* for the shipowner or remanding the case for a new trial under proper instructions. In the event the Court remands the case to the Court of Appeals for the Seventh

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[1] *Scindia Steam Navigation Co. v. De Los Santos*, No. 79-512, slip op. at 19 (U.S. Sup.Ct. April 21, 1981).

Circuit, the Court should point out the inapplicability of the *Edmonds* case to the issues before the court below.

Respectfully submitted,

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